

Osage Operators Environmental Reference Manual Update Process
March Stakeholder Meetings
Head Right Holders and Restricted Landowners

March 4, 2014
Osage Casino, Skiatook, Oklahoma
Draft Meeting Summary

Introductions and Opening Remarks

Patrick Field, facilitator from the Consensus Building Institute, opened the meeting and thanked participants for attending. Officials from the Osage Minerals Council, the US Environmental Protection Agency, and the US Bureau of Indian Affairs introduced themselves. A full list of individuals in attendance can be found in Appendix A.

Representatives from the Osage Minerals Council, the Bureau of Indian Affairs, the Environmental Protection Agency, and the Osage County Cattlemen's Association each made opening statements:

- Christina Kracher, Tribal Consultation Advisor, EPA Region 6, thanked all parties for coming to the table and putting in the time and effort to provide input to the Manual revision process. She said that the Manual and Handbook were originally developed for use by operators but that the current revision also envisions incorporating some best management practices into these documents. She stated that the government agencies had already met with the Osage County Cattlemen's Association and the Osage Producers Association earlier in the day and the current meeting was seeking input from head right holders, restricted landowners, and other members of the public. Ms. Kracher explained that the current process is functioning differently than did the Negotiated Rulemaking. Most importantly, EPA and BIA are not seeking to reach an official consensus with members of the public or specific stakeholder groups. Instead, EPA and BIA are taking public input and public comment and providing an opportunity for dialogue. That being said, however, Ms. Kracher articulated an aspiration for the various public stakeholders to reach as much commonality as possible.
- Eddie Streater, Deputy Regional Director, BIA Eastern Oklahoma Regional Office, thanked all parties for attending the meeting. He expressed hope that all stakeholder groups could work together to create a useful document and said that the Manual update process is intended to create best practices for oil and gas operations in Osage County.

- Andrew Yates, Chairman of the Osage Minerals Council thanked all parties for attending the meeting. He noted that many parties worked together to develop the 1997 Manual and handbook and that they have been very useful resources over the past 17 years. Since that time, there have been many updates in operations and understanding around environmental and health issues and that now is the time to update the Manual accordingly. In addition, an updated Manual can help to create a level playing field between small and large producers and landowners.

Review of the Manual Revision Process Guidelines

Patrick Field, facilitator with the Consensus Building Institute, reviewed the process guidelines governing the Manual revision process. Reading from the guidelines, he stated:

Revision of the Manual is intended to provide guidance on how to comply with current environmental laws and regulations governing oil and gas operations within Osage County. The Manual will also provide clarification on which agencies should be contacted in the event someone has concerns regarding those gas and oil operations. The objective of the Manual is to provide clear, useful guidance and best management practices for daily responsibilities concerning gas and oil operations in Osage County.

Mr. Field also noted that the Manual is not intended to provide legal advice, the Manual revision process is not intended to create new regulations, and that ownership and management of the mineral estate of Osage County is highly unique. He explained that the Manual update process is neither designed nor intended to seek consensus among stakeholders; rather, EPA and BIA are soliciting comment and input from stakeholders and will decide independently on revisions. Mr. Field also reviewed the role of the facilitators to serve as neutral facilitators of the process and to create draft meeting summaries, without attribution, of each meeting, which will be sent to representatives of relevant stakeholder groups for review prior to publication. Mr. Field also summarized the timeline and future meetings in the Manual revision process. The process guidelines can be found at the following URL: <http://bia.gov/cs/groups/xregeasternok/documents/text/idc1-025587.pdf>.

Joint Review of the Manual

Meeting participants discussed each section of the draft Manual as they are currently laid out.

Section: I. Important Contact Information

EPA representatives explained that this section lays out the phone numbers that members of the public can call when they have any sort of issue to report. In addition, people can call the National Response Center in case of oil spills.

A head right holder asked why is the State of Oklahoma is granting permits to dig wells to extract water in Osage County. EPA representatives explained that production wells are regulated by the BIA and injection wells are regulated by EPA. The Underground Injection Control program deals with water quality but does not pertain to the quantity of groundwater withdrawal.

Section: II. Water Pollution Prevention: The Clean Water Act

EPA representatives explained that this section of the draft Manual deals with protection of surface water from discharges of brine or produced water. In addition, a separate section of the draft Manual addresses the discharge of oil to surface waters, which is also prohibited.

Section: III. Injection Well Requirements

An EPA representative explained that this section, on injection well requirements, is the most detailed section of the Manual because it follows the process-driven protections enshrined in the Safe Drinking Water Act. He noted that Section III covers reporting of injection well activity, conversion of injection wells to production wells, lease transfer procedures, mechanical integrity testing, and permit procedures and technical requirements for injection wells.

A member of the public suggested that it may make more sense to have the permitting process at the beginning of this section of the Manual as opposed to at the end of this section.

A head right holder asked the agencies why they are not regulating groundwater withdrawals. EPA representatives responded that their agency does not have the authority to regulate withdrawals. A BIA representative explained that the Department of the Interior holds that the Osage Nation has legal claim to the water and that current regulations allow the Superintendent to regulate water being used for oil and gas operations. The BIA representative added that the State of Oklahoma disagrees with the Department of the Interior's legal position but that the legal disagreement had not been settled. In response to a question from the head right holder, a BIA representative said that operators do not pay for groundwater withdrawals. An Osage Minerals Council representative stated that water rights meetings are currently underway in the Osage Nation and that might be a better forum to deal with concerns about water withdrawals.

Section: IV. Spill Prevention Control and Countermeasures

An EPA representative explained that the Spill Prevention Control and Countermeasures (SPCC) guidelines have been in place since the 1970s. The regulations require all operators to have an SPCC Plan on site; the plans are created by certified engineers and are designed to reduce the

likelihood of spills occurring and, in the event that a spill does occur, provide a plan to clean it up.

A member of the public asked whether EPA has authority over any spill that could potentially go into the water and an EPA representative confirmed that this is correct. A member of the public asked how jurisdiction is decided between EPA and BIA and about the staffing levels at both agencies. An EPA representative responded that Congress has given EPA jurisdiction over certain areas, such as underground injection control wells and SPCC plans, and that, in terms of staffing, EPA has a number of staff in its Region 6 office in Dallas and two people in its Tulsa field office, one with responsibility for surface water and the other with responsibility for groundwater.

Section: V. Clean Air Act

An EPA representative explained that this section is new to the 2014 draft of the Osage Operators Manual and was not included in the 1997 Manual. The section on air pollution functions somewhat differently from the other sections of the Manual since there are very few regulatory requirements placed on oil and gas facilities with regards to controlling air pollution. Instead, a general duty clause to operate in an environmentally friendly manner applies to oil and gas production facilities and the EPA has laid out a host of best management practices to help flesh out the general duty clause. If it seems that an operator is generally failing to comply with these best management practices, EPA can take enforcement action, but the agency will not enforce each of these air quality provisions individually. The EPA representative also explained that hydrogen sulfide (H₂S) is not designated as a hazardous air pollutant under federal law, thereby precluding EPA from regulating it directly, but that the draft Manual includes a number of best management practices for operators that would effect H₂S emissions such as managing general leaks and flaring. The US National Institute for Occupational Safety and Health (NIOSH) has updated the Immediately Dangerous to Life or Health (IDLH) level for hydrogen sulfide to 100 ppm from the 300 ppm that is included in the draft Manual. Finally, the draft Manual does contain references to a few specific regulations where applicable regulations exist, such as in sub-section “D” (on page 47 of the draft Manual), and these regulatory provisions allow EPA to regulate these areas specifically.

A member of the public asked about who would be performing inspections of facilities to maintain compliance with the best management practices articulated in the draft handbook and who would be interpreting the results of the inspections. An EPA representative responded that producers conduct the inspections and they maintain records that EPA will inspect. A member of the public asked about who performs inspections to make sure that oil and gas is measured correctly. An Osage Minerals Council representative responded that the BIA’s Osage

Agency has staff to perform this function and is currently in the process of increasing its gauging staff. A member of the public stated that small, “mom and pop” production companies would not be able to afford the hand-held infrared cameras suggested under § V.C.f (on page 47 of the draft Manual), to which an EPA representative responded that the best management practices in this section of the Manual are recommendations, not requirements, and that the Manual is written for both large and small operators.

Section: VI. Resource Conservation and Recovery Act

An EPA representative explained that oil and gas exploration and production operations are mostly exempt from the Resource Conservation and Recovery Act (RCRA) and that the language in the draft Manual largely details those exemptions. The language has been slightly updated from the 1997 Manual.

Section: VII. Naturally Occurring Radioactive Material

EPA representatives briefly explained that this section contains recommended practices for protecting employee-health from possible exposure to naturally occurring radioactive material. They noted that the sites are not radioactive due to the presence of NORM, but rather that operators should take precautions in handling production equipment to limit their exposure to NORM.

A member of the public asked whether EPA representatives have been on location to observe mineral development operations, noting that the best management practices contained in the draft Manual are not followed by many operators in the field, and asked EPA representatives whether they have told operators that they cannot do what they are doing. An EPA representative responded that, yes, he has significant experience in the field and that, because the best management practices are not regulations, he cannot dictate to operators what to do or not to do unless he has regulatory authority to do so.

Section: VIII. Migratory Birds

An EPA representative explained that this section of the draft Manual provides information about the coverage of the Federal Migratory Bird Treaty Act and suggestions about practices that operators can employ to comply with the Act.

Additional Discussion of the Manual

The facilitator from the Consensus Building Institute noted that a couple of sections were included in the 1997 handbook that were not included in the 1997 Manual. Those sections will be included in both the revised Manual and the revised handbook.

An Osage Minerals Council representative explained that, upon completion of the Manual, BIA and EPA will develop a shorter Handbook, based on the Manual, for ease of use in the field. The representative explained that, although their names are sometimes used interchangeably, there are two separate documents: a Manual and a Handbook. The Manual is a longer document while the Handbook is a shorter version of the Manual that is designed for daily reference and work in the field.

A member of the public asked who is paying for the Manual revision, to which an OMC representative responded that the federal government is paying for it.

In response to a question about how the Manual and handbook will be distributed, an OMC representative responded that it will be available at the Osage Minerals Council, the Oklahoma Department of Natural Resources, and other locations.

A member of the public asserted that all of the rules and regulations rely on self-regulation by the operators and that the operators are not going to report on their own wrong-doing and mistakes. EPA representatives responded that there are mechanisms in place for enforcement, including inspection programs by both the EPA and BIA, as well as the BIA hotline number that members of the public can call if they want to report their concerns. In response to a question about providing quality assurance, an EPA representative reiterated that both EPA and BIA have mechanisms in place for enforcement.

A member of the public inquired about what instigated the Negotiated Rulemaking and the Manual revision process, asserting that everything was going fine for years and then Ted Turner was out there blocking development, and then Melissa [the former Superintendent of the Osage Agency] was gone, and then all kinds of things changed. In response, a BIA representative explained that the Osage Nation entered into a \$385 million legal settlement with the federal government for mismanagement of the mineral estate, and that the settlement included an agreement to revise regulations. The member of the public asked why she had never heard about any of this before and the BIA representative responded that the Bureau had taken out advertisements in all of the newspapers in Osage County and in the Osage Nation newspapers and posted notice on the OMC website.

Additional Issues Raised and Discussed

A head right holder asserted that rules have been changed in terms of homestead exemptions and that these changed need to be reversed because they are illegal under federal law. Representatives of the Osage Minerals Council and the Bureau of Indian Affairs responded that

there had been no changes of that sort and that restricted lands are still subject to the dominant mineral estate.

Some head right holders and restricted landowners present also asserted that too much groundwater is being withdrawn for oil and gas operations and inquired as to whether EPA is monitoring and regulating groundwater withdrawals. In response, a BIA representative stated that water use in Osage County for oil and gas operations is governed by CFR 226.24, which allows operators to take surface water for oil and gas use as long as the withdrawals do not limit water use by the surface owner. A head right holder said that she has not been able to determine the depth to which surface land rights hold, and an OMC representative responded that Osage County does not have a defined depth for surface ownership. Instead, the Osage own all minerals, whether they are below-ground or whether they are above-ground. A BIA official noted that the US Department of the Interior and the State of Oklahoma have conflicting legal interpretations about the current status of water rights in Osage County.

A head right holder stated that an operator had improperly plugged a well on his land and asked which agency is responsible for regulating this activity. Another member of the public responded that he had witnessed over 1000 well pluggings in Osage County and that not one of those has failed yet.

A member of the public asked about who wrote the Manual and an EPA representative responded that the 1997 version was written with input from EPA, BIA, OMC, and producers. The goal is to recreate that participatory process for the Manual revision.

A member of the public asked about who is representing the interests of the Osage in the Manual update process. A BIA representative stated that the BIA will always side with protecting the interest of the Osage Nation and the mineral estate. A member of the public responded that the BIA representative had said in a meeting in Pawhuska the previous week that the BIA is a neutral party in the current process. After some discussion about what may have been said, a BIA representative said that it is not worth trying to reconstruct exactly what was said and in what context. The BIA is trying to keep an open mind to take input from all parties. But in the background, the BIA and DOI have a trust responsibility to the Osage. The BIA is hoping that, at the end of the day, various groups can come together and agree on what should go into the Manual so that management of the mineral estate can be more successful.

A member of the public asked about restricted landowner receiving lesser compensation than other surface owners in case of spills. A BIA representative explained that the Osage Agency has historically negotiated settlement agreements on behalf of restricted landowners with

producers but that restricted landowners are not obligated to accept the terms of these agreements. The BIA representative also noted that the BIA and the Minerals Council are discussing this issue in their consultation.

A member of the public asked about companies wanting to pass pipelines through restricted lands and asserted that pipeline companies have been instructed to stay off of restricted lands by the Osage Agency. Representatives of the BIA and OMC responded that oil and gas operations are subject to the dominant mineral estate (and can therefore pass through restricted lands) and stated that they were not aware of any such instruction to pipeline companies and that, in fact, the BIA is currently collecting revenues from pipelines that are on restricted lands.

In response to a question from a member of the public about the tribe compact, a Minerals Council representative responded that he had not heard much credible discussion about the tribe compact recently.

Public Comment

Participation from members of the public was included in discussions throughout the course of the meeting. Note the summary of such comments above.

Adjournment

The meeting was adjourned at 8:30 pm.

Action Items*Consensus Building Institute:*

- Create a meeting summary for review by EPA, BIA, and OMC for finalization under CBI's auspices.

Attachment A: Attendance

COMMITTEE MEMBERS

Last Name	First Name	Organization	Principle or Alternate
Abbott	Sonny	Osage Minerals Council	P
Crum	Galen	Osage Minerals Council	P
Yates	Andrew	Osage Minerals Council	P
Bear	Curtis	Osage Minerals Council	P
Core	Melvin	Osage Minerals Council	P
Red Eagle	Myron	Osage Minerals Council	A
Whitehorn	Dudley	Osage Minerals Council	A
Manydeeds	Stephen	Department of Interior, Assistant Secretary-Indian Affairs, Chief, Division of Energy and Mineral Development	P
LaCounte	Darryl	Department of Interior, Bureau of Indian Affairs, Deputy Regional Director-Trust Services, Rocky Mountain Regional Office	P
Stockbridge	James	Bureau of Land Management, Trust Liaison and ONRR Liaison	P
Tyler	Paul	Office of Natural Resources Revenue, Program Manager, State and Indian Coordination	P

AGENCY AND OTHER STAFF

Last Name	First Name	Title	Organization
Mouton	Mitch	Minerals Revenue Specialist	Office of Natural Resource Revenue
Black	Mike	Director	Bureau of Indian Affairs
Ray-Hodge	Vanessa	Attorney for DOI	Department of Interior, Office of the Solicitor
Impson	Robert	Deputy Regional Director, Trust Services	Bureau of Indian Affairs
Streater	Eddie	Designated Federal Officer	Bureau of Indian Affairs
Loftin	Rhonda	Acting Superintendent	Osage Agency
Canady	Cammi	Realty Assistant	Osage Agency
Field	Patrick	Facilitator	Consensus Building Institute

Kansal	Tushar	Facilitator	Consensus Building Institute
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MEMBERS OF THE PUBLIC

Last Name	First Name	Public Comment
Boone	Cynthia	Yes
Box	Aaron	No
Carter	E. W.	No
Chinn	Alan	No
Chinn	Larry	No
Clemenshire	Chris	Yes
Cooper	Nevin	No
Cox	Dewey	No
Cox	Jerry	No
Cubbage	Will	No
Davenport	George	No
Doyel	Landy	No
Duty	Shannon	No
Erwin	Stephanie	No
Graham	Marcy	No
Glenn	Betty	No
Glenn	Hoyt	No
Hammons	Christy	No
Heskett	Linda	Yes
Henry	Jeff	Yes
Hurd	John	Yes
Hurlburt	Charles	No
Jackman	Bob	Yes
Johnson	Mary L.	Yes
Keipert	Joe	No
Krehbiel-Burton	Lenzy	No
Lyon	Rob	Yes
Martin	Robert	No
Matson	Shane	Yes
McClain	Ray	Yes
McIlvain	Joe	No
Medico	James	Yes
Meyer	Jane	No
Murphy	Scott	No
O'Toole	Dan	Yes

Park	Bill	No
Peng	Peter	No
Plummer	Robert	No
Reed	Melvin	No
Righetti	Tara	Yes
Roach	Nona	Yes
Rountme	John	No
Schultheis	Aaron	No
Scorsone	Mike	No
Short	Mark	No
Sicking	Jamie	Yes
Spess	Richard	No
Spurgeon	Chuck	No
Tranum	Florence	No
Trumbly	Mary Jo	No
Unruh	Charles	No
Waller	Everett	No
Whitewing	Joyce	No
Wilson	Clay	No
Wilson	Julie	No
Winlock	Richard	No
Woods	Lanny	No
Woodward	Steve	No